

Response
U.S. Patent Application No. 10/688,733
Attorney Docket No. MAT 314

REMARKS

By way of this Amendment, claims 30-49 are canceled and new claims 50-69 are presented. Accordingly, claims 50-69 are pending in the subject application with claims 50, 54, 59, and 66 being independent claims.

Objection to Drawings

In the Final Office Action, the drawings were objected to under 37 C.F.R. 1.83(a). In particular, certain recited features in claims 30, 33, 34, and 47 were alleged not to be shown in the drawings. As noted above, claims 30, 33, 34, and 47 have been canceled in this Amendment, thereby rendering the objection to the drawings moot. In addition, the claim features identified in the Final Office Action as allegedly not being shown in the drawings are not recited in any of the new claims 50-69. Accordingly, Applicants respectfully request that the objection to the drawings be withdrawn.

Claim Rejections under 35 U.S.C. 112, First Paragraph

In the Final Office Action, claims 30-35 and 42-49 were finally rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the written description requirement. In particular, certain recited features in claims 30, 33, 42, and 47 were alleged not to be described in the specification sufficiently to meet the written description requirement. As noted above, claims 30, 33, 34, and 47 have been canceled in this Amendment, thereby rendering the rejections of the claims under 35 U.S.C. 112, first paragraph, moot. In addition, the claim features identified in the Final Office Action relative to the rejections under 35 U.S.C. 112, first paragraph, are not recited in any of the new claims 50-69. Accordingly, Applicants respectfully request that the claim rejections under 35 U.S.C. 112, first paragraph, be withdrawn.

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Claim Rejections under 35 U.S.C. 112, Second Paragraph

In the Final Office Action, claims 30-49 were finally rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. In particular, certain recited features in claims 30, 33, 36, 38, 40, and 42 were alleged as being indefinite. As noted above, claims 30, 33, 36, 38, 40, and 42 have been canceled in this Amendment, thereby rendering the rejections of the claims under 35 U.S.C. 112, second paragraph, moot. In addition, the claim features identified in the Final Office Action relative to the rejections under 35 U.S.C. 112, second paragraph, are not recited in any of the new claims 50-69. Accordingly, Applicants respectfully request that the claim rejections under 35 U.S.C. 112, second paragraph, be withdrawn.

Claim Rejections under 35 U.S.C. 103(a)

In the Final Office Action, claims 30-49 were indicated as being rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 2,587,142 to Gray et al. (“Gray”) in view of German Publication No. 29611499 (“Hartmann”) or German Publication No. 19750436 (“Hubertus”). Applicants have canceled claims 30-49 in this Amendment, thereby rendering the rejection of those claims under 35 U.S.C. 103(a) moot. Nevertheless, Applicants set forth below remarks relating to the rejections in the Final Office Action.

The Final Office Action alleged that it “would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate magnets as suggested by Hubertus or Hartmann in the toy vehicle of Gray et al. for the purpose of **providing components of a toy vehicle with a secured connection when assembled**.” (Emphasis added).

The Final Office Action also indicated that the “examiner takes Official Notice of the equivalence of bolts, dowel pins and magnets for their use in the toy art and the selection of any of these known equivalents to connect various parts of a toy vehicle would be within the level of ordinary skill in the art.” The Official Notice of the Patent Examiner in the Final Office Action is unsupported by documentary evidence. Such Official Notice “should only be taken by the

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Examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well known” (see MPEP 2144.03). Applicants respectfully submit that in this case, the Official Notice that is unsupported by documentary evidence is improper. In particular, Applicants respectfully submit that bolts, dowel pins and magnets to connect parts of a toy vehicle are not equivalent in either the manner in which they connect parts or the ability to separate the parts. Magnets facilitate the assembly and reassembly of toy vehicles and their parts. When toy vehicles using magnets crash into a structure, various parts can separate easily, simulating a crash. Bolts provide a very secure connection of parts of a toy vehicle – one in which separation is not desired. Dowel pins, as set forth in *Gray*, provide a “sturdy” connection that does not allow for the “accidental disengagement” of parts. Moreover, the Applicants respectfully submit that the Official Notice taken by the Patent Examiner functions as the motivation to combine references in the rejection. Accordingly, Applicants respectfully submit that the Official Notice is improper, requests that it be withdrawn and requests adequate evidence in support of such an assertion.

Gray discloses a model automobile assembly kit. *Gray* teaches the use of dowel pins and dowel slots and holes to couple various components together. Reference is made to col. 4, lines 54-70 of *Gray*, in which lines 60-63 recite that “[b]y the interlocking of selected parts as described, the entire assembly holds itself together as a sturdy unit with the minimum of screw-threaded fastenings.” Moreover, lines 67-70 recite that “a sturdy toy is provided having interlocking parts which avoid accidental disengagement from the assembled model.” (Emphasis added)

Hartmann discloses a toy that is shaped as a model and/or miniature car, boat, aircraft and/or spaceship. *Hartmann* discloses that “[f]avourably magnet connections for the individual parts are intended. Different parts, as for example the hood, the trunk lid and doors, are additionally according to invention arranged by patch cords or bolt connections at the Korpus of the play vehicle, so that these do not separate so easily.” (Emphasis added – based on machine translation of the specification of *Hartmann*)

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Hubertus discloses a “model car has a chassis with engine and wheels and a body, which detaches partially during a collision” and that the “detachable part is retained on the vehicle via a joint or wire after the magnetic force is released.” (See the abstract.) *Hubertus* also discloses that if “by an impact of the driving toy on an obstacle or alternatively for example by the impact of another vehicle acceleration forces affect the vehicle, which exceed a certain size, the parts **held by magnetic field strength at the driving toy separate automatically** from the vehicle.” (Emphasis added – based on machine translation of the specification of *Hubertus*)

Based on the teachings of the cited references as set forth above, Applicants respectfully submit that the motivation set forth in the Final Office Action to combine the references is inconsistent with the disclosure of *Gray* and is untenable. In particular, the modifying references do not teach the motivation set forth in the Final Office Action of modifying *Gray* to use magnets to provide a “secure connection when assembled,” particularly when *Gray* teaches that its dowel pin and slot/hole configurations provide “sturdy” connections that “avoid accidental disengagement” already. Accordingly, Applicants respectfully submit that the combination of *Gray* in view of *Hartmann* or *Hubertus* fails to teach or suggest the invention as recited in the claims. Applicants have canceled claims 30-49, thereby rendering the rejection of those claims moot.

New Claims 50-69

Applicants respectfully submit that *Gray*, *Hartmann*, and *Hubertus*, taken alone or in a proper combination, fail to teach or suggest the invention as recited in each of the independent claims 50, 54, 59, and 66. Applicants respectfully submit that each of the dependent claims 51-53, 55-58, 60-65, and 67-69 is allowable for at least its dependency, directly or indirectly, from one of the independent claims, and for the additional features that it recites.

In view of the foregoing, the Examiner is respectfully requested to find claims 50-69 to be in condition for allowance. However, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to call the

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undersigned attorney to discuss any unresolved issues and to expedite the disposition of the application.

Applicant hereby petitions for any extension of time that may be required to maintain the pendency of this case, and any required fee for such extension is to be charged to Deposit Account No. 05-0460.

Respectfully submitted by:

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